

**MINUTES OF THE
UTAH CONSTITUTIONAL REVISION COMMISSION**
Thursday, June 11, 2009 – 9:00 a.m. – Room 450 State Capitol

Members Present:

Judge Jon M. Memmott, Vice-Chair
Rep. Brian S. King
Rep. Ronda Rudd Menlove
Sen. Peter C. Knudson
Sen. John L. Valentine
Ms. Lisa Watts Baskin
Mr. Byron L. Harward
Mr. Kirk Jowers
Dr. Michael Petersen
Mr. Roger Tew

Members Absent:

Rep. Sheryl L. Allen
Sen. Scott D. McCoy
Mr. Robin L. Riggs

Staff Present:

Mr. Jerry D. Howe, Policy Analyst
Mr. Robert H. Rees, Associate General Counsel
Ms. Amanda K. Majers, Legislative Secretary

Note: A list of others present, a copy of related materials, and an audio recording of the meeting can be found at www.le.utah.gov.

1. Committee Business

Vice-Chair Memmott called the meeting to order at 9:08 a.m. Sen. McCoy, Rep. Allen, and Mr. Riggs were excused from the meeting. Vice-Chair Memmott welcomed Rep. King to the Commission. He was appointed to replace Rep. Litvack.

MOTION: Sen. Knudson moved to reappoint Mr. Byron Harward as a member of the Utah Constitutional Revision Commission. The motion passed unanimously.

MOTION: Sen. Knudson moved to reappoint Mr. Michael Petersen as a member of the Utah Constitutional Revision Commission. The motion passed unanimously.

MOTION: Sen. Knudson moved to appoint Mr. John T. Nielsen as a member of the Utah Constitutional Revision Commission. The motion passed unanimously.

MOTION: Mr. Tew moved to appoint Judge Jon Memmott as the chair of the Utah Constitutional Revision Commission. The motion passed unanimously.

Commission members discussed potential candidates for the vice-chair position.

MOTION: Mr. Harward moved to appoint Mr. Tew as the vice-chair of the Utah Constitutional Revision Commission. The motion passed unanimously.

Chair Memmott reviewed the dates for upcoming meetings and the subjects to be discussed.

MOTION: Sen. Valentine moved to approve the minutes of the February 8, 2008; May 8, 2008; December 5, 2008; and March 6, 2009 meetings. The motion passed unanimously.

2. Death Penalty and Post-Conviction Amendments

Chair Memmott distributed and discussed a memorandum from the Utah Constitutional Revision Commission (the Commission), "Proposed Constitutional Amendment - Post Conviction Appeals;" a response to the Commission memorandum from the Utah Office of the Attorney General, "Responses to the CRC's May 28, 2009, request for information;" and a response to the Commission memorandum from Mr. Daniel Medwed, Associate Professor of Law, University of Utah, "Proposed Constitutional Amendment - Post-Conviction Remedies."

Mr. Mark Field, Capital Litigation Staff Attorney, Administrative Office of the Courts, described the post-conviction relief process. Mr. Field discussed "Rule 65C, Post-conviction relief," "Post-Conviction Remedies Act (2008) Part 1 - General Provisions," and "Post-Conviction Relief Procedural Checklist - Annotated," which were distributed to the Commission prior to the meeting.

Mr. Field answered questions from the Commission.

Mr. Fred Voros, Chief of the Criminal Appeals Division, Utah Office of the Attorney General, discussed the history of the Legislature's action regarding post-conviction. He referred to "Utah's Death Row Chart," which was distributed to the Commission prior to the meeting, and discussed "Responses to the CRC's May 28, 2009, request for information." Mr. Voros explained procedural bar standards and their effect on post-conviction appeals. He advocated a constitutional amendment to guarantee the courts adhere to the standards of the Post-Conviction Relief Act (PCRA). Mr. Voros welcomed the Commission's input concerning the proposed constitutional amendment.

Mr. Voros and Mr. Thomas Brunker, Chief of the Post-Conviction Division, Utah Office of the Attorney General continued to present their arguments in favor of the proposed post-conviction reform constitutional amendment and answered questions from the Commission.

Rep. King inquired if there has been a case decided by the Court of Appeals or the Utah Supreme Court, since the passage of the PCRA, where the court has exercised its constitutional or common law authority to allow a post-conviction claim to proceed even though the PCRA would have barred the claim.

Mr. Brunker referred Rep. King to *Gardner v. Galetka*, 94 P.3d 263 (Utah 2004), which was distributed to the Commission prior to the meeting.

3. Other Business / Adjourn

MOTION: Sen. Valentine moved to adjourn the meeting. The motion passed unanimously.

Chair Memmott adjourned the meeting at 11:39 a.m.